

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Robyn Smith for Devan VanBrunt, a minor,
by his mother and natural guardian,

Plaintiff,

Civ. No. 11-1771 (RHK/LIB)
ORDER

v.

Blitz U.S.A., Inc., *et al.*,

Defendants.

On March 5, 2012, Plaintiff filed a First Amended Complaint in this action, adding as Defendants Kinderhook Capital Fund II, L.P. (the “Fund”) and Kinderhook Industries, LLC (“Kinderhook,” and together with the Fund, the “Kinderhook Entities”). The Kinderhook Entities moved to dismiss or, in the alternative, to stay the claims against them, noticing their Motion for a hearing on June 18, 2012. The Court’s review of the First Amended Complaint, however, left it unclear whether the parties were diverse, as Plaintiff had failed to identify the Fund’s partners and Kinderhook’s members.

Accordingly, it struck the First Amended Complaint, canceled the hearing on the Motion, and ordered Plaintiff to file a new Amended Complaint pleading with specificity the identity and citizenship of each partner/member of the Kinderhook Entities. On June 11, 2012, Plaintiff filed a Second Amended Complaint, dropping her claims against Kinderhook but continuing to press claims against the Fund. The allegations in the Second Amended Complaint are sufficient to establish diversity jurisdiction over this case.

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS ORDERED** that the Kinderhook Entities' Motion to Dismiss or, in the alternative, Stay (Doc. No. 74), which was directed at the First Amended Complaint, is **DENIED AS MOOT**. If Kinderhook intends to move to dismiss the Second Amended Complaint, it shall file its Motion and supporting documents in accordance with Local Rule 7.1(b), rather than relying on those previously filed.

Date: June 27, 2012

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge